IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

(1)- D.B. CENTRAL EXCISE APPEAL NO. 01/2004
(Aditya Cement Vs. Union of India and Ors.)
(2)- D.B. CENTRAL EXCISE APPEAL NO. 02/2004
(Aditya Cement Vs. Union of India and Ors.)
(3)- D.B. CENTRAL EXCISE APPEAL NO. 03/2004
(Aditya Cement Vs. Union of India and Ors.)
(4)- D.B. CENTRAL EXCISE APPEAL NO. 04/2004
(Aditya Cement Vs. Union of India and Ors.)
(5)- D.B. CENTRAL EXCISE APPEAL NO. 05/2004
(Aditya Cement Vs. Union of India and Ors.)
(6)- D.B. CENTRAL EXCISE APPEAL NO. 06/2004
(Aditya Cement Vs. Union of India and Ors.)
(7)- D.B. CENTRAL EXCISE APPEAL NO. 07/2004
(Aditya Cement Vs. Union of India and Ors.)
(8)- D.B. CENTRAL EXCISE APPEAL NO. 08/2004
(Aditya Cement Vs. Union of India and Ors.)
(9)- D.B. CENTRAL EXCISE APPEAL NO. 09/2004
(Aditya Cement Vs. Union of India and Ors.)
(10)- D.B. CENTRAL EXCISE APPEAL NO.10/2004
(Aditya Cement Vs. Union of India and Ors.)
(11)- D.B. CENTRAL EXCISE APPEAL NO.11/2004
(Aditya Cement Vs. Union of India and Ors.)
(12)- D.B. CENTRAL EXCISE APPEAL NO.12/2004
(Aditya Cement Vs. Union of India and Ors.)
(13)- D.B. CENTRAL EXCISE APPEAL NO.13/2004
(Aditya Cement Vs. Union of India and Ors.)

Date of Order :: 22.03.2007

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr Lekh Raj Mehta)
Mr.Ramit Mehta)for the petitioner.
Mr Vineet Kumar Mathur, for the respondents.

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

All these appeals arise out of common order passed by the Customs Excise & Service Tax Appellate

Tribunal, New Delhi in 13 appeals before the Tribunal arising in the case of the same manufacturer-appellant raising common issues about claim of the assessee to modvat credit on capital goods of different nature.

The following substantial questions of law were framed in each case as appeal arises out of a common order of the Tribunal :-

> "1.Whether the Tribunal was right in disallowing modvat credit on capital goods, namely, iron & steel items under Rule 57Q of the Central Excise Rules, 1944 used as parts and components of eligible manufacturing machinery / equipments used in various Sections / sub-sections of the petitioner's plant?
>
> 2.Whether in view of the fact that steel items were used a parts and components of eligible machinery and not used as building material or raw material, can there be any justification for disallowing the Modvat Credit?
>
> 3. Whether an item will fall within the definition of capital goods or not depends upon the use to which it is put to and consequently when steel items in question have been used as parts / components of machinery, the same would also necessarily be capital goods?
>
> 4. Whether in the facts and circumstances of the present case, the precincts of the plant area, where the crusher and conveyor belt are installed, can be called as a factory within the meaning of Section 2(e) of the Act?
>
> 5. Whether the mining area and the area covered under the crusher and the conveyor belt reaching plant falls within the premises / precincts

of the factory as defined in Sec.2(e) of the Act?

6. Whether capital goods used in the precincts of the factory area for obtaining crushed limestone and transporting crushed limestone into raw mill which is then used in the plant for the manufacture of cement can be considered as eligible for Modvat credit in terms of Rule 57Q of the Central Excise Rules, 1944?

7. Whether Tribunal was right in coming to the conclusion that railway track material does not fall within the definition of capital goods given in Rule 57Q of the Rules?"

For the purpose of enquiry into the issues raised before us, we may categories the questions into three sets to bring out the focal attention.

The questions No. 1, 2 and 3 relate to disallowing of modvat credit availed by the manufacturer-appellant on various items of iron and steel under Rule 57Q of the Central Excise Rules, 1944, claiming it to have been used as parts and components of machinery installed for the purpose of manufacture of Cement. It was claimed by the appellant that out of total purchases of steel items in question, only 5% were used as parts and components of the plant and machinery, the principal plant of manufacturing activity and remaining 95% were used for building constructions. It has claimed modvat credit only in respect of 5% of total purchase of steel items used as parts and components of machinery. The adjudicating

authority as well as appellate authority; Commissioner (Appeals) and Tribunal disallowed the appeal of the assessee only on the ground that his steel items were not related to the process of manufacturing directly. However, the claim of the appellant that 5% of the steel purchases were utilized as parts and components of the machinery was not refuted.

The questions No.1, 2 and 3 relate to this part of the controversy and appropriate question can be reframed as under :-

> "Whether the Tribunal was justified in disallowing modvat credit on iron and steel items used by the assessee as parts and components of eligible machinery on the ground that the same were not directly involved in manufacturing of Cement."

The question No.7 relates to claim of the assessee to avail modvat credit on railway track material as it was being used for transporting coal for manufacturing of Cement, therefore, was part of manufacturing process which was not attached to actual manufacturing plant. The claim to modvat credit of the railway track material was also disallowed on the ground that the Railway track material was not directly involved in manufacturing process. Therefore, the second question which calls for consideration is :

> "whether the Tribunal was right, in the facts and circumstances, to disallow the claim of the appellant to modvat credit' in respect of duties paid on railway track material used for transporting of coal and finished products in terms of rule 57Q for the reason that the railway track is not directly involved in manufacturing process."

The third controversy raised in these appeals relates to claim of the assessee to modvat credit of the "duty paid on the capital goods used on site at captive mines which is connected with the principal plant through conveyor belts for carrying mineral as raw material to plant and the machinery involved at the mines site for the purpose of winning minerals making it use-able and transporting the same to the raw mill where it is used for the purpose of manufacturing Cement."

The claim of availing modvat credit in respect of capital goods used at mine site was disallowed on the ground that the mine site is not part of factory or precincts of the factory and is not involved in the manufacturing process. In other words, the question arises for consideration is :

> "whether in the facts and circumstances of the case the manufacturer can avail modvat credit of duty paid on the capital goods used at the captive mine sites for the purpose of winning minerals and transporting it to the raw mill through conveyor belt after subjecting them to crushers."

So far questions No. 1 and 2, reframed by us are concerned, the key issue is whether for the purpose of availing modvat credit in respect of capital goods is it essential that such capital goods will be used directly for producing or processing any goods or for bringing any change in any substance for the manufacture of final products, in order to be eligible for availing modvat credit of duties paid thereon as capital goods.

The contention of the assessee in this regard is that clause (a) of sub-section (1) of Explanation appended to Rule 57Q, which defines "capital goods", provides for modvat credit on "duty paid capital goods used in manufacture of specified goods".

The focus of contention raised by the manufacturer is that the reading of provisions relating to availing modvat credit on capital goods as a whole indicates that it has been used on much wider scope of capital goods than being confined to capital goods used in manufacture of specified goods directly. It is contended that different heads of Central Excise Tariff

Act, 1985 enumerated in sub-clauses (b), and (d) of clause (1) of Explanation to which we have referred above indicates that the direct use of those articles for producing and processing any goods or for manufacturing of final product is not essential.

We are of the opinion that answer to this question is no more res integra. The Hon'ble Supreme Court in its decision in Commissioner of C.Ex., Coimbatore Vs. Jawahar Mills Ltd. 2001(132) E.L.T.3 (SC) page 3, while considering the definition of capital goods under Rule 57Q even after its amendment said :

> "4. The aforesaid definition of 'Capital goods' is very wide. Capital goods can be machines, machinery, plant equipments, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be 'Capital goods', and, therefore, qualify for availing Modvat credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be 'Capital goods' and qualify for Modvat credit entitlement. Clause (c) make moulds and dies, generating sets and weigh bridges used in the factory of the manufacturers as capital goods and thus qualify for availing Modvat credit. The goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing

> about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal."

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The Hon'ble Supreme Court has yet another occasion to consider the object and purpose of expression “used in manufacture of final product” in Indian Farmers Fertilisers Cooperative Ltd. Vs. Collector of Central Excise, Ahmedabad (1996)5 SCC 488. The Hon'ble Supreme court in the said case considered the case of ammonia used in the manufacture of fertilizer at distance from site of manufacturing urea to be later on used in the manufacture of Urea and the effluents treatment plant which was not directly connected with the manufacture of final product. The claim of the assessee on both counts was denied on the very same ground that the place where capital goods were used and treatment plant were not directly involved in the manufacturing of final product and were neither components and ancillary part of the plant and machinery. This view was negatived by the Supreme Court explaining that expression “used in the manufacturing of” does not necessarily relate to direct use of ammonia in manufacture of fertilizer but even its use in the activity essential for the purpose of manufacture of Urea would make it eligible for exemption.

In relation to effluents treatment plant which is not directly involved in activity essential for the purpose of manufacturing of product ammonia, the Hon'ble Supreme Court observed :

> "It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid and effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular 4 end product is part and parcel of the manufacturing process of that end product."

This Court had occasioned to consider this aspect of the matter and in appellant's own case in D.B. Central Excise Appeal No.5 (UOI Vs. Aditya Cement) decided on 8.11.2005, the issue related to the claim of manufacturer to avail modvat credit in respect of item used in workshop meant for repairing the machine which was used for manufacturing of final product. The Tribunal had accepted the contention of the assessee and hence, the revenue was in appeal. This Court after referring to the aforesaid two decisions and provisions of Rule 57Q opined :

> "It leaves no room of doubt in our mind that in all circumstances, direct involvement with producing or processing any goods or for bringing about any change in any substance for the manufacture of final products with the machines, machinery, plant, equipment, apparatus, tools or appliances are not essential condition, if it fails in any of the clauses (b), (c) and (d) the essential condition of direct involvement of the capital goods in the manufacture in process is not to be seen."

That leaves no room of doubt in our mind that in all circumstances, direct involvement with producing or processing any goods or for bringing about any change in any substance for the manufacture of final products with the machines, machinery, plant, equipment, apparatus, tools or appliances are not essential condition, if it falls in any of the clauses (b), (c) and (d). The essential condition of direct involvement of the capital goods in the manufacturing process is not to be seen.

Considering the scope of definition of capital goods in the light of the aforesaid two judgments of the Hon'ble Supreme Court, the Court held :

> “The two decisions clearly lay down that the language used in the exemption notification or Rules governing the conditions for tax exemption must be so considered to further the object for which they have been made. They also established that capital goods used in the manufacture or which they are required to be used in manufacture of a particular article must be given a liberal interpretation so as to include all processes and requirements which were essential for smooth running of the plant engaged in the manufacture of the end product to come within the ambit of expression “used in manufacture of”. All those activities which are essential for running the plant or bringing into existence the end product are held to be part of the process of manufacture of end product.”

The Court also explained the meaning of expression “used in manufacture of” in the light of object of provision as enunciated by the Hon'ble Apex Court. It cannot be gain said that where plant and machinery activity is going on, the principal plant and machinery do suffer wear and tear in the course of its operation and requires regular backup through proper up-keep and normal maintenance for which the supplementary and subordinate machinery are required to be kept at site.

We are of the opinion that the principle emerging from decisions of the Hon'ble Supreme Court and of this Court applies to the present case also. In the light of the aforesaid principle, if we take into account the use of iron and steel ingot as parts and components of its machinery used in manufacturing Cement, Railway Track materials needed for transporting fuel as essential for manufacturing in the plant, it is clear that so far as the items of iron and steel are concerned, they are used as providing parts and components of the plant and machinery and becomes essential elements of the machine itself without which the machinery would not be functioning smoothly and properly. Therefore, the direct involvement of those parts and components which are essential to hold the machine become part and parcel of the machine itself. Such components and parts of the machine become eligible for availing modvat credit of duties paid

thereon. In view thereof the appellants must be held entitled to avail modvat credit of duties paid on 5% of the total value of iron and steel purchased by manufacturer used as components and parts of the machines. It is not in dispute and no claim is laid to other 95% of the steel and iron.

So far as the claim to Railway Track material is concerned, it is common ground that the same has been used for transporting of coal and product of cement. Apparently, though the coal is not end product of the appellant but used as essential adjunct of plant for feeding it with fuel, the essential element of production process for manufacture of cement. Without supply of fuel the plant does not function. Therefore, the Railway Track used for one of the essential activity of running the plant itself cannot be kept out of consideration for availing modvat credit though which is not being used directly for the purpose of manufacture of cement. But if as an integral part of manufacturing cement bringing of coal directly to the machine from site, railway track is used, it becomes part of plant and of manufacturing process. Similarly, until the end product reaches in deliverable state, it remains part of the manufacturing process. In view of this matter the claim of the assessee in respect of modvat credit of duty paid on railway track material deserves to be sustained.

So far as question relating to availing of modvat credit of duties paid in respect of capital goods used at the site of captive mines is concerned, the question is concluded by the decision of the Hon'ble Supreme Court in Vikram Cement's case and subsequently by the decision of this Court following the aforesaid decision of the Hon'ble Supreme Court holding as under:

> "In M/s Vikram Cement Vs. Commissioner of Central Excise-I (Civil Appeal No. 119/2005) and other connected appeals decided on 16th Feb.,2006, the Supreme Court held that modvat credit in respect of capital goods used at captive mines will be available to the assessee. It was stated that the question of allowability of modvat credit on duties paid on capital goods used at captive mines is also governed by the ratio laid down in the earlier Vikram Cement's case 2006 (194) ELT 3, and the Court said that :-
>
> > As regards the Modvat/Cenvat Credit on capital goods, if the mines are captive mines so that they constitute one integrated unit together with the concerned cement factory, Modvat / Cenvat credit on capital goods will be available to the assessee. On the other hand, if the mines are not captive mines but they supply to various other cement companies of different assessees, Modvat/Cenvat credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules. The matters are remanded to the respective original authorities for decision only on the above issue.

> Since in this case, it is not in dispute that the capital goods were used at captive mines only, the availability of modvat credit on duties paid on such capital goods and inputs is squarely governed by the aforesaid decisions in Vikram Cement's cases."

The aforesaid principle fully governs the case of the appellants in respect of their claim to modvat credit in respect of capital goods used at captive mines.

In view of the aforesaid decision, these appeals succeed and are allowed. The appellants are held entitled to avail modvat credit in respect of duties paid on 5% of total iron and steel items used by it as part and components of the machinery. The appellants are also held entitled to avail modvat credit in respect of duties paid on railway track material and duties paid on capital goods used at captive mine sites. The order of the Tribunal and authorities below disallowing the claim to modvat credit in respect of aforesaid items is set-aside. The claims of the assessee to modvat credit in respect of the items subject matter of these appeals are allowed.

No costs.

(BHAWAROO KHAN),J. (RAJESH BALIA),J.

Rm/-